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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 TRAVIS JUSTIN CUELLAR, ) Case No.: 1:20-cv-00707-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER DIRECTING CLERK OF COURT TO  
14 FRESNO COUNTY SHERIFF, et al., ) RANDOMLY ASSIGN A DISTRICT JUDGE TO  
15 Defendants. ) THIS ACTION  
16 ) FINDINGS AND RECOMMENDATION  
17 ) RECOMMENDING PLAINTIFF’S REQUEST  
 ) FOR ENTRY OF DEFAULT BE GRANTED  
 ) (ECF No. 14)  
 )

18 Plaintiff Travis Justin Cuellar is proceeding *pro se* and *in forma pauperis* in this civil rights  
19 action pursuant to 42 U.S.C. § 1983.

20 Currently before the Court is Plaintiff’s request for entry of default, filed December 10, 2020.

21 **I.**

22 **DISCUSSION**

23 Rule 55(a) of the Federal Rules of Civil Procedure requires that the Clerk of the Court enter  
24 default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or  
25 otherwise defend, and that failure is shown by affidavit or otherwise . . . .” Fed. R. Civ. P. 55(a). A  
26 party seeking a default judgment must first receive an entry of default from the clerk of court. *Id.* (citing  
27 Fed. R. Civ. P. 55(a)). Second, the party must move the court for default judgment pursuant to Rule  
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1 55(b). Id.; Lack v. Rustick, No. CV 06-2204-PHX-MHM, 2008 WL 268712, at \*1 (D. Ariz. Jan. 28,  
2 2008).

3 This action proceeds against Defendants Bruton and Cisneros for excessive force in violation of  
4 the Fourteenth Amendment. Because Plaintiff is proceeding *in forma pauperis*, the Court ordered  
5 service of process by the United States Marshal on July 21, 2020. (ECF No. 10.)

6 Here, on November 5, 2020, the Court received two USM–285 forms from the Marshal  
7 indicating that personal service was effected upon Defendants Bruton and Cisneros which gave the  
8 two Defendants twenty-one days, i.e. November 25, 2020, in which to file a response to the complaint.  
9 Fed. R. Civ. P. 12(a)(1)(A)(i). (ECF No. 12.) To date, neither Defendant Bruton or Cisneros has filed  
10 a response to the complaint and the time to do so has passed. (Id.) Accordingly, entry of default is  
11 warranted.

## 12 II.

### 13 ORDER AND RECOMMENDATION

14 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court be directed to  
15 randomly assign a Fresno District Judge to this action.

16 Further, it is HEREBY RECOMMENDED that:

- 17 1. The Clerk of Court be directed to enter default against Defendants Bruton and  
18 Cisneros;
- 19 2. The Clerk of Court shall serve a copy of this order on Defendants Bruton and Cisneros  
20 at the address of service of the summons and complaint to be maintained confidential  
21 and not placed on the docket; and
- 22 3. The Clerk of Court shall also serve a copy of this order on the Litigation Coordinator at  
23 the Fresno County Main Jail, 1225 M. Street, Fresno, CA, 93721.

24 This Findings and Recommendation will be submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**  
26 **days** after being served with this Findings and Recommendation, the parties may file written  
27 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
28 Findings and Recommendation.” The parties are advised that failure to file objections within the

1 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-  
2 39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3  
4 IT IS SO ORDERED.

5 Dated: **December 11, 2020**



UNITED STATES MAGISTRATE JUDGE